

(1990) 07 MAD CK 0116

In the Madras High Court

Case No : C.M.A. No's. 663 of 1984 and 267 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

B. Saraswathi Ammal and Others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1991) 2 ACC 512 : (1991) ACJ 327 : (1990) 2 LW 319

Hon'ble Judges : Raju, J;K. Venkataswami, J

Bench : Division Bench

Advocate : K. Padmanabba, for the Appellant; V. Veeraswami, for the Respondent

Judgement

K. Venkataswami and Raju, JJ.—These two appeals arise out of the common order of the Motor Accidents Claims Tribunal, Chingleput, dated 23.6.1984 in M.O.P. No. 248 of 1982.

2. C.M.A. No. 663 of 1984 has been filed by the insurance company and C.M.A. No. 267 of 1986 has been filed by the claimants praying for enhanced compensation.

3. The claimants are the wife and the children of deceased Balan alias Balakrishnan who met with an accident on 12th April, 1982. On that ill-fated day, deceased Balan appears to have engaged a lorry TMS No. 3778 for transport of paddy purchased by him, from Pettai to Pillaichatram. The deceased Balan was also travelling in the cabin of the lorry with his goods. It is claimed that the driver of the lorry was driving the vehicle rashly and at a high speed resulting in the right wheel of the lorry getting released from its position and the axle on the right side broke. In the process, the lorry hit a tree nearby at a place in between Beemanthangal and Poultry Centre. Balan, who was in the cabin, died. Hence the heirs of the deceased filed M.O.P. No. 248 of 1982 before the Accidents Claims Tribunal claiming a compensation of Rs. 1,50,000/-. It was claimed that the deceased was aged 37 years at the time of the accident and that he was working

as a Manager in a rice mill getting a monthly salary of Rs. 1,000/-.

4. The first respondent in C.M.A. No. 267 of 1986 is the owner of the lorry and the second respondent is the insurance company with whom the vehicle has been insured. The owner of the lorry contended that there was no rash and negligent driving and on the other hand, the accident was beyond the control and expectation of anyone and due to sudden mechanical failure and that the compensation claimed was excessive. The insurance company, while reiterating such submission of the owner of the vehicle, contended that the deceased was one who was travelling in the vehicle without paying fare and consequently there was no liability so far as the insurance company is concerned.

5. The Claims Tribunal, after considering the oral and documentary evidence, came to the conclusion that the accident in question was a consequence of the rash and negligent driving of the driver of the lorry. We find that the said finding has been arrived at with reference to the relevant evidence on record and the same is unassailable. Hence we confirm the said finding of the Accidents Claims Tribunal.

6. With reference to the next question about the quantum of compensation, the records produced to show the monthly income were disbelieved and the Tribunal, for sufficient and proper reasons, came to the conclusion that the deceased would be getting only a monthly income of Rs. 500/-. Out of this sum, after allowing Rs. 250/- for the personal expenses of the deceased, the contribution to the family per month was determined at Rs. 250/-. On that basis the annual contribution to the family was fixed at Rs. 3,000/-. It was further decided that the deceased would have been in a position to earn and contribute to the family for another 20 years and applying the said multiplier, the total amount was arrived at Rs. 60,000/-. Under the heading of mental shock and loss of mental peace, another sum of Rs. 5,000/- was determined to be awarded. The said sum was apportioned and a sum of Rs. 25,000/- was directed to be paid to the first petitioner and Rs. 10,000/- each to petitioner Nos. 2 to 4 who are the minor children and a sum of Rs. 10,000/- was directed to be paid to the fifth petitioner, who is the mother of the deceased. The minors' shares were directed to be invested in the Indian Bank and only the interest accruing thereon was directed to be paid during their minority.

7. With reference to the next question as to the liability of the owner of the vehicle and the insurance company, the Tribunal below, by relying on the decision of the Karnataka High Court reported in T.M. Renukappa v. Fahmida 1980 ACJ 86 (Kar) came to the conclusion that since the deceased was travelling in the vehicle along with his goods and died in the accident to the vehicle, both the respondent Nos. 1 and 2 are liable to pay the compensation to the claimants.

8. As referred to already, C.M.A. No. 267 of 1986 was filed by the claimants claiming enhanced compensation. The counsel for the appellants in C.M.A. No. 267 of 1986 reiterated the claim that the deceased was getting a monthly

income of Rs. 1,000/- and that in the absence of any evidence to the contrary the same ought to have been accepted and consequently the compensation as claimed ought to have been fixed. In our opinion, the Claims Tribunal considered this issue with reference to all materials available and having regard to the discrepancies pointed out with reference to the register from the rice mill, we agree that no reliance could be placed on the same. Consequently, no exception could be taken to the finding of the Tribunal that the deceased would have been earning a sum of Rs. 500/- per mensem. We agree with the finding of the Tribunal in this regard. If this finding of the Tribunal is sustained, there could be no objection and as a matter of fact there was no serious challenge before us to the total compensation arrived at. Consequently, we feel that there are no merits in the appeal filed by the claimants. Hence C.M.A No. 267 of 1986 is liable to be dismissed.

9. So far as the appeal filed by the insurance company is concerned, learned counsel appearing for the insurance company drew our attention to a decision reported in *M. Kandaswamy Pillai v. Chinnaswamy* 1985 ACJ 232 (Mad) and contended that having regard to the said judgment of a Division Bench of this court, the decision of the Karnataka High Court has no relevance and application to the cases arising in this State. We find from the above decision of the Division Bench that the position of law enunciated by the Karnataka High Court is with reference to the peculiar terms of Rule 161 (1) of the Karnataka Rules. Likewise, the position prevailing in the State of Maharashtra is on account of the peculiar terms of Rule 118 of the Rules in force in that State. Having noted all these differences in the law applicable to the respective States, the Division Bench, after referring to the earlier case law on the subject, specifically held that the owner of the goods, who accompanies his goods in the lorry transporting the same, cannot be said to be a person employed by the person insured by the policy and that either the injury or death arose out of and in the course of his employment. In view of the said Bench decision of this court, we have to sustain the contention of the counsel for the insurance company and disagree with the reasoning of the Tribunal. The counsel for the claimants contended that the case on hand is one wherein the lorry itself has been engaged from the starting point to the destination by the deceased to transport his goods with which he was accompanying in the lorry and on that account, the ratio of the Bench decision may not apply to the present case. We are unable to agree with the submissions of the learned counsel for the claimants. The earliest of the series of cases of our High Court is the one reported in *Commonwealth Assurance Co. Ltd. v. V.P. Rahim Khan Sahib* 1971 ACJ 295 (Madras). That was a case where also from the report we find that the deceased engaged the lorry for transporting mangoes from Vellore to Madras and while he was travelling with his goods in the lorry, the vehicle met with an accident in which the owner of the goods, accompanying his goods in the lorry, died. This judgment of a learned single Judge was quoted with approval in the decision of this court by a Division Bench reported in *C. Narayanan v. Madras State Palm Gur Sammelan*, 1974 ACJ 479 (Mad) In South

India Insurance Co. Ltd. v. P. Subramaniam 1972 ACJ 439 (Mad) a Division Bench came to the conclusion that in the case of an owner of the goods accompanying the goods, there is no contract of employment between the owner of the goods and the owner of the lorry. It was further held in that case that even if it is taken that the words "contract of employment" referred to in the second proviso to Section 95(1)(b) would include not only the employees of the insured but also the employees of the owner of the goods, the owner of the goods travelling in the lorry cannot be said to be doing so by reason of or in pursuance of any contract of employment for there is no such employment as such in such a case. On the facts of this case, the clear finding is that the deceased was the owner of the goods travelling in the cabin of the lorry with his goods. To a specific question put by us to the counsel for the claimants, he admitted that his claim is only on the basis that the deceased was travelling in the lorry as the owner of the goods transported in the lorry. That being the fact in this case, we accept the contention of the counsel for the insurance company that the insurance company is not liable.

10. The owner of the lorry has not filed any appeal challenging the liability fixed on him for the amount. That apart, in a decision reported in New India Assurance Co. Ltd. v. Santha 1988 ACJ 689 (Mad) a learned single Judge of this court, after an elaborate consideration of the various decisions on the subject, held that the owner of the lorry cannot escape his liability and will be liable to pay compensation to the deceased in similar circumstances. As a matter of fact, a Division Bench in a decision reported in G. Dhyanand v. Zaamni Bi 1982 ACJ 399 (Mad) also held that the owner of the lorry will be liable though the insurance company may not be so liable. For all these reasons, we allow the appeal filed by the insurance company, but make it clear that this will not in any way affect the liability of the owner of the lorry to the claimants. Hence CM.A No. 663 of 1984 has to be allowed.

11. In the result, C.M.A. No. 267 of 1986 is dismissed and No. 663 of 1984 is allowed. But there will be no order as to costs in both these appeals.